

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA Plaintiff,	:	CASE NO. 1:02CR-54
	:	(Judge Bunning)
	:	
vs.	:	
	:	<u>ORDER</u>
	:	
TYREECE PUGH	:	
Defendant,	:	

This matter is before the Court on Defendant Tyreece Pugh's Motion for Reconsideration of the Court's Order of Denial Filed on November 1, 2011 and for Leave of Court for Permission to Expand the District Court Record (Doc. # 204). The United States having filed a response (Doc. # 208), and the time for filing a reply having now expired, the matter is ripe for review. For the reasons that follow, Defendant's motion is denied.

In his motion, Defendant contends that the Court's November 1, 2011 Order (Doc. # 202) rejecting in part and denying in part the Magistrate Judge's Report and Recommendation (R&R) (Doc. # 200) and ultimately denying Defendant's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. # 197) was a "misinterpretation of [Defendant's] *pro se* filing, as well as a premature denial" of his motion to vacate. (Doc. # 204, at 1). Defendant now alleges that his ineffective assistance of counsel claim is based on a "continuous course of deficient performances at critical stages" of his case, including before trial, at trial, at sentencing, and on direct appeal. However, Defendant failed to raise these issues in his original motion to vacate.

As stated in the Court's previous Order, Defendant's § 2255 motion was based entirely upon the argument that his trial counsel was ineffective for failing to move for a directed verdict of acquittal. (Doc. # 197, at 4) (emphasis added). Based upon this argument, the Magistrate Judge found that Defendant's motion should be denied because Defendant failed to prove the two key elements of *Strickland v. Washington* to establish an ineffective assistance of counsel claim. It is well-settled that a defendant is procedurally barred from raising new arguments that were not raised before the Magistrate Judge. *Murr v. United States*, 200 F. 3d 895, 902 n.1 (6th Cir. 2000) (holding that a party is not allowed to raise new arguments or issues, for the first time, in objections to a Report and Recommendation and that the failure to raise such arguments or issues before the Magistrate Judge constitutes a waiver). In the present case, not only did Defendant fail to raise the additional arguments concerning his ineffective assistance of counsel claim before the Magistrate Judge, but he also failed to raise these arguments in his objections to the Magistrate Judge's R&R (Doc. # 201). Since Defendant now raises new arguments that were not raised in his original § 2255 motion, they are deemed waived, and the Court need not address them. See *Murr*, 200 F.3d at 902 n.1.

One final matter deserves brief comment. Since the filing of the United States' response, Defendant has filed a Motion for Leave of Court to File a Motion for Discovery Pursuant to and to Expand the Court Record in Accordance to Rules 6 and 7 of the Rules Governing 2255 Proceedings (Doc. # 209). Defendant contends that without the production of discovery, "it would be impossible for [him] to file a complete and substantial 2255 motion." For the reasons discussed above, because the Court is unwilling to reconsider its prior Order denying Defendant's § 2255 motion (Doc. # 202), Defendant's motion for

discovery and to expand the record to assist him with his § 2255 motion will be denied as moot.

Accordingly, for the reasons set forth herein,

IT IS ORDERED that Defendant Tyreece Pugh's Motion for Reconsideration of the Court's Order of Denial Filed on November 1, 2011 and for Leave of Court for Permission to Expand the District Court Record (Doc. # 204) is hereby **DENIED**.

IT IS FURTHER ORDERED that Defendant Tyreece Pugh's Motion for Leave of Court to File a Motion for Discovery Pursuant to and to Expand the Court Record in Accordance to Rules 6 and 7 of the Rules Governing 2255 Proceedings (Doc. # 209) is hereby **DENIED AS MOOT**.

This 31st day of January, 2012.



Signed By:

David L. Bunning

DB

United States District Judge